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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/478,616	01/04/2000	JACQUES LAURENT	KWPTP001US2	1912

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OPPEDAHL AND LARSON LLP
P O BOX 5068
DILLON, CO 80435-5068

EXAMINER
PITTMAN, ZIDIA T

ART UNIT	PAPER NUMBER
1725	13

DATE MAILED: 05/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/478,616	LAURENT ET AL.	
	Examiner	Art Unit	
	Zidia Pittman	1725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 February 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *17-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *17-33* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☒ Certified copies of the priority documents have been received in Application No. *08/875,870* .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s)
4) ☐ Interview Summary (PTO-413) Paper No(s) __
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other

DETAILED ACTION

Response to Arguments

In view of the appeal brief filed on February 19, 2003, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

2. Ascertaining the differences between the prior art and the claims in issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 17-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent Application (EP 0 344 726) in view of Bries et al (USPN 6,231,962).

EP 0 344 726 discloses a packaging material formed of a polyolefin based laminate. The laminate comprises a polyolefin foam layer, such as polyethylene or polypropylene, and laminated on both sides is a film that can be made of polyethylene, ethylene-propylene rubbers, and mixtures thereof. The laminate can further include other films in order to enhance various properties, such as gas barrier properties, stiffness, heat resistance, and sealing properties. EP '726 differs from the present invention in that it does not disclose the combination of co-extrusion and adhesive bonding of the foam layer to the coating films or wherein at least one of the outermost layers of the packaging material is a sealing layer comprising peelable polyethylene.

layer by any conventional techniques, such as co-extrusion or adhesion (abstract; pg. 3, l. 22-44 and 50-58; pg. 4, l. 12-58).

Bries et al discloses a pressure-sensitive adhesive tape which can be firmly adhered to a surface and thereafter removed therefrom without substantially damaging the surface or leaving substantial adhesive residue thereon and comprising a backing and a first layer of a pressure sensitive adhesive composition coated on at least one surface of the backing, the backing comprising a layer of polymeric foam (col. 1, l. 10-13 and 28-44). The polymeric foam backing has layers of the same or different pressure-sensitive adhesive compositions on opposite surfaces thereof (col. 3, l. 28-36). Another embodiment of the invention comprises a polymeric foam layer and polymeric film layer which are adhered to one another by a layer of pressure-sensitive adhesive composition. Polymeric film layer may be used to increase the load bearing strength and rupture strength of the tape (col. 3, l. 37-44). The invention comprises a coextruded foam/film layer comprising a polymeric foam layer and a polymeric film layer (col. 4, l. 13-29). Representative examples of materials suitable for either a polymeric foam or solid polymeric film layer in the backing of the tape includes polyolefins such as polyethylene and polypropylene (col. 4, l. 46-52). Pressure-sensitive adhesives suitable for application include olefins (col. 5, l. 41-44).

The skilled artisan would have found it obvious to have used the combination of conventional techniques disclosed in Bries et al, namely coextruding the foam layer and

laminate which contained a reliable, consistent bond. [illegible] skilled artisan would have

found it obvious to have used a peelable form of the adhesive in order to provide an adhesive which can be firmly adhered to a surface and thereafter removed therefrom without substantially damaging the surface or leaving substantial adhesive residue thereon and comprising a backing.

With regard to the limitations to the thickness ranges of the bonding layers and film layers, it would have been obvious to the skilled artisan to have used any reasonable thickness adhesive layer, i.e. between 5-30 microns, motivated by the desire to obtain a desired bond between the foam material and the film layer. Specifically, it would have been within the level of ordinary skill in the art to use a thick adhesive layer, i.e. 30 microns, if a strong bond is desired. Likewise, it would have been within the level of ordinary skill in the art to use a thin adhesive layer, i.e. 5 microns, if a weaker bond is desired.

It is the examiner's position that a packaging material of EP '726 in view of Bries et al is only slightly different than the packaging material prepared by the method of the claim(s), because both packaging materials are formed of a polyolefin based laminate. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or an obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re*

applicant to show unobvious differences between the claimed product and the prior art

product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983). EP '726 in view of Bries et al strongly suggests the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted Declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with EP '726 in view of Bries et al.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Arthurs (USPN 5,460,870), Ando et al (USPN 4,882,002), Razzano et al (USPN 4,728,567), and Bonk et al (USPN 4,563,388) are cited as of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zidia Pittman whose telephone number is (703) 305-1248. The examiner can normally be reached on Monday – Thursday and alternate Fridays from 8:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Dunn, can be reached at (703) 308-3318. The official fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718. The unofficial fax number for art unit 1725 is (703) 305-6078.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone

SUPERVISORY PATENT EXAMINER
TOM DUNN